§ 7.—*Definition of Quantity or Number.*

Lastly, it may occur that either the terms of a grant, or the circumstances of the case, show that the right is in its nature, and apart from any *regulation* for forest purposes, defined to a certain number (of cattle) or quantity (of wood). In practice this will rarely be the case: if it is it must be recorded at once, as part of the *definition* process. But in the great majority of cases, the fixing of quantities, &c., will be a matter which is done under the necessary power given to *regulate* the right (even after it is *defined*) by what the forest can bear. The most likely case in which *number* is a fixed feature of the right itself, is that of grazing rights. I have already considered these cases, but I did so in the earlier section (see page 127), because it was more convenient to conclude the whole question of *number* in regard to cattle grazing, in one place.

SECTION VI.—THE METHOD OF PROVIDING FOR ADMITTED AND DEFINED RIGHTS.

§ 1.—*The three Methods stated.*

When the nature and general features of the forest right admitted have been thus ascertained and recorded, the next thing to do is to make provision for the right.

The Indian Acts contemplate three obvious methods of doing this. The first two, however, leave the right in existence; the third has the effect of *compensating* the right-holder and the right ceases to exist. I must, therefore, deal with the methods which bear the right in existence separately and that of compensation afterwards. The two methods for dealing with rights which are *left in existence* (and not bought out) are:—

(1) **Altering the proposed boundaries of the forest so as to exclude a portion of the area, which must be sufficient in extent, and reasonably convenient in situation, for the purposes of the right-holder, and, giving**

this up to the exercise of rights:—the rest of the forest is then free[7].

In this case the right itself is not affected; the site of its exercise only is transferred, and that must be so as not unfairly to inconvenience the right-holder.

(2) Recording an order admitting the right to exercise inside the forest, subject to regulation, as to the number of cattle, quantity of forest produce, local limits of exercise, season of exercise, and all other conditions necessary to make the right compatible with a proper management of the forest.

This involves, it will be observed, the *regulation* of the right.

At first, as already explained, the claim to the right, if found valid, is admitted and recorded, and its incidents and features (as they lawfully exist) are ascertained and defined. If it is then determined that the right cannot be provided for in the first method, this second comes into play. The right must be exercised inside the forest, but then it must be regulated within such reasonable limits that the forest will not deteriorate nor will improvement be rendered impossible. Here then comes the necessity for further prescribing to what extent, in what parts of the forest, in what seasons, and under what conditions, it is to be exercised[8].

[7] In the India Act this process is exhibited under two heads, *viz.*,—

(*a*) the provision is to be made in some forest tract *not* being part of the forest under settlement: that means, of course, a "forest tract" in the ordinary sense of the term—not a bit of salt or barren waste, for instance, that would not (in its existing condition) serve the right-holder's purpose;

(*b*) it is made by cutting off a portion of the forest itself, as in the text. Practically, I do not know of any case where this first method of providing for rights has been carried into effect. The alteration of the proposed reserve is what is usually done, and it was thought quite sufficient to include both things in one in the Burma Act.

[8] "Statements of rights" recorded in working schemes or plans should always have two columns—

(1) Right as claimed and defined according to its nature, &c;

(2) Right as ultimately adjusted for exercised in the forest.

But it is also desirable to notice any claims that were made (whether definite or not) which were simply rejected altogether; such a notice will keep the forest officer informed against any surreptitious attempt to exercise the rejected rights.

In other words, the *record* of the right has now to be *completed*, not only with reference to the nature and existing features of the right, but with reference to the maintenance of the forest: and the Settlement Officer, who (especially in this part of the business) will naturally act in consultation with the forest officer, will determine—(as far as practicable)—

(*a*) the number and description of the cattle which the claimant is, from time to time, entitled to graze, the local limits within which, and the season during which, such pasture is permitted; or

(*b*) the quantity of timber or other forest produce which the claimant is entitled to take or receive, the local limits within which, and the season during which, and the mode in which, the taking of such timber is permitted, and such other particulars as may be required in order to define the extent of the right which is continued and the mode in which it may be exercised (Burma Act, section 14); in short, that is to record all terms so as to give no occasion for conflict between the right-holder and the forest administration.

§ 2.—*Process of allotting Land outside Forest.*

A few remarks may here be offered as to these two methods of providing for rights, in all of which the right itself *continues* to exist. As regards the first method of settlement above mentioned there is but little to be said.

It will be observed that the tract provided to be cut off from the forest is not granted to the right-holder in proprietary right, or as compensation, and therefore this process has really nothing in common with the French method of "*cantonnement*" under the Code, of which we shall hear presently[9]. It is only granted to him

[9] Nor is it exactly the same as that of the Italian law, where a grant of land is made in compensation for a right, only the absolute ownership is not given. The title there is what is called *Emphyteusis, i.e.*, the right to everything except the bare proprietary right and subject to a payment of a '*pensio*' or sum in acknowledgment of the proprietor's right.

to exercise his right there. The Act has not at present laid down anything regarding the supervision of the lands on to which these rights are shifted, nor is it apparent whether the lands cut out of the proposed reserve could afterwards, by a separate settlement, be made into a reserved or a village forest, when it became desirable. Practically, as yet, no question on this point has arisen. The people are bound in their own interest to see that they so use the tract that it will *continue* to supply what they want; for if they abuse it, and it fails to do so any more, *they cannot have any claim whatever to come back on the original forest which has been freed.*

§ 3.—*Regulation of Rights exercised inside the Forest.*

As regards the second method, the student will at once perceive the practical application of those principles of the *Regulation of Forest Rights,* which I discussed in full with reference to each kind of right in Part I of this Manual (Chapter V). I put this important subject in the part which deals with *principles* (inherent in the nature of servitudes), partly because that seemed to me the more logical place for it, and partly because, had I introduced it into this chapter on the Procedure of Forest Settlement, it would have involved a lengthy chapter in the middle, which would have caused the student to lose the thread of the description of the several stages of the process of settlement. He should, however, thoroughly master the subject in connection with the procedure at this point, and I may recall to his memory the leading features of the discussion. Rights of user in a forest are not rights of co-ownership and can never be so exercised as to destroy the forest or render it useless to the owner. Hence they must always be regulated to what the forest will bear: the forest is to be maintained in the normal and proper condition for a forest of its class; and the interests of both sides are to be considered: if either the forest is to be put under such a very improved and refined form of management, that the rights must be seriously curtailed, or if it is essential to get rid of rights altogether, then we go beyond a *fair and equitable regulation* of user, and we are naturally led to

the next provision of the law which tells us what is to be done, where it is necessary so to deal with the right that the *right itself* is got rid of.

I shall make no apology for repeating that as long as one of the two methods of dealing with rights just described can be followed, the enjoyment of the right itself is not infringed.

In the first case, the defined right is provided for in a piece of land *excluded* from the reserved forest; in the second, the defined right is allowed to be exercised *inside* the reserved forest, under those reasonable *regulations* and *conditions*, which, while providing for the safety and improvement of the forest (on a normal and natural plan of management), do not seriously or unreasonably impair the exercise of the rights.

§ 4.—*Caution about Rights in a Reserved Forest.*

In this place also it may be desirable that I should remind the reader that there is not least reason why a forest should not be "Reserved" because there are rights to be provided for in it. On the contrary, the very fact that there are a number of demands made on the forest for its produce, make it all the more imperative that the forest should be kept in such order that it may be able permanently to meet those demands. And that is not possible unless the forest is "Reserved," that is permanently constituted a forest estate under the management of the State.

There was a time, which I hope has now gone by, when people imagined that a reserved forest was a kind of luxury, to be had only on a limited scale, and to be entirely free of rights so as to be capable of producing the best timber; and that the bulk of forests were to be left "open" or "unreserved" or "protected" (or whatever phrase was in vogue). The absurdity of such a view will hardly now need exposure; it is all based on the supposition that a forest, *not* demarcated, without any defined limit to the rights which may be claimed, with every villager free to do very much as he likes with it,—that such a forest *will continue to supply*